In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 273

THE CUBAN TRUCK AND EQUIPMENT COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We respectfully invite the attention of the Court to the following facts which demonstrate that the petition was filed out of time:

On June 12, 1964, the Court of Claims rendered its opinion rejecting petitioner's contention that it was entitled to compensation for an alleged taking of petitioner's property by the United States. Judgment in favor of the United States was entered in accordance with that decision. A timely motion for rehear-

ing and to amend findings of fact, was denied on October 16, 1964 (Pet. App. C). No petition for a writ of certiorari was filed in this Court within the 90-day period prescribed by 28 U.S.C. 2101(c) for the filing of a petition for a writ of certiorari. Nor was an extension of time sought from this Court during that period (which expired on January 14, 1965). Accordingly, the petition for a writ of certiorari, filed on June 18, 1965, was untimely.

This conclusion is not affected by the fact that, on November 13, 1964, petitioner filed a motion for relief under Rule 69(b) of the Rules of the Court of Claims,[1]

---

[1] Rule 69(b) provides:

"Relief from judgment or order.

"Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.; Response: On motion conforming to Rule 11 and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 68(c); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. A motion under this paragraph (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the court to entertain an independent ac-

which was denied on January 22, 1965. In obtaining an order from the Chief Justice on March 24, 1965, extending the time for the filing of a petition for a writ of certiorari to and including June 21, 1965, petitioner apparently proceeded on the assumption that the certiorari period provided in 28 U.S.C. 2101 (c) did not commence to run until the motion was denied. But Rule 69(b) in terms provides that "[a] motion under this paragraph (b) does not affect the finality of a judgment or suspend its operation." Thus, motions under that Rule do not operate to suspend the running of the certiorari period.[2]

Respectfully submitted.

RALPH S. SPRITZER,
Acting Solicitor General.

AUGUST 1965

---

tion to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The relief provided by this rule shall be in addition to the relief available to the United States under Rule 68(a) (2). A response to a motion under this paragraph may be filed within 15 days after a motion is served."

[2] The petitioner also filed, on March 17, 1965, a motion in the court below for the correction of certain alleged omissions from the findings of fact. Petitioner seemingly recognizes that this motion did not have the effect of extending the time for seeking certiorari.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 782638 72